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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the third periodic report of Kazakhstan

Addendum

Information received from Kazakhstan on follow-up to the concluding observations*

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* The present document is being issued without formal editing.

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Information from Kazakhstan on the implementation of recommendations 8, 10, 13 and 15 of the United Nations Committee against Torture

Recommendation 8

1. Effective investigation of allegations and prosecution of perpetrators of torture and ill-treatment.

2. The State party should:

(a) Establish an effective, fully resourced, independent and accountable body that is able to carry out prompt, impartial, thorough and effective investigations, including preliminary investigations, into all allegations of torture and ill-treatment, ensuring that such investigations are never undertaken by personnel employed by the same ministry as the accused persons;

(b) Ensure that such an independent body is also empowered to receive and act on complaints of alleged torture and ill-treatment by law enforcement officials, including complaints of sexual violence; ensure that persons deprived of their liberty are able to transmit confidential complaints to such bodies; and ensure that this body is able to protect effectively complainants from reprisal;

(c) Provide the Committee with information on:

- The number of complaints of torture made by persons deprived of their liberty;
- The number of claims of acts of torture and ill-treatment that have been investigated and by which body (bodies);
- The number of persons prosecuted and under what charges; and the penalties applied for those found guilty.

3. With the entry into force on 1 January 2015 of the new Code of Criminal Procedure, the way in which the work of the special procurators is organized has been revised.

4. For example, pursuant to order No. 48 of the Procurator General of 27 March 2015, a new instruction on the organization of pretrial investigations within the procuratorial agencies was adopted. The instruction establishes a priority category of criminal offences and criminal cases requiring action by special procurators. This category covers criminal offences committed by law enforcement officials during service, including torture. The Procurator General has the exclusive prerogative to order the investigation of other criminal offences by special procurators.

5. The number of such criminal cases increased over the reporting period. This relates to the fact that the pre-investigation checks that were previously part of the criminal justice process have been abolished. Order No. 1/15 of the Procurator General of 8 February 2013, which was in force for the first three months of 2015, meant that any statements or complaints concerning torture received by the procuratorial agencies were dealt with by special procurators.

6. Under paragraph 96 of the Instructions on monitoring of the legality of the pretrial phase of the criminal justice process, approved by order No. 50 of the Procurator General of 30 March 2015, if the procuratorial authorities receive statements or information concerning torture and there is sufficient evidence to show that a criminal offence has occurred, the provincial procurator immediately records them in the single register of pretrial investigations and arranges a proper

investigation and the adoption of a lawful procedural decision. Furthermore, in every such case, the provincial procurator must inform the Procurator General of the situation within 24 hours.

7. In addition, pursuant to article 187 (4) of the Code of Criminal Procedure, in cases concerning criminal offences provided for under article 146 of the Criminal Code (on torture), the pretrial investigation is conducted by an internal affairs agency or anti-corruption service of which the person concerned is not an employee.

8. According to article 8 of the Code of Criminal Procedure, the steps involved in the criminal justice procedure are prevention, the prompt, impartial and thorough elucidation and the investigation of criminal offences, as well as the identification and prosecution of the perpetrators.

9. Hence, the abolition of the pre-investigation check, the prompt initiation of the pretrial investigation and the investigation of the case by special procurators, procurators or investigators from an internal affairs body or anti-corruption service of which the person concerned is not an employee, help to ensure the impartial, prompt and full elucidation and investigation of criminal offences related to torture and ill-treatment.

10. In the first nine months of 2015, 490 complaints and reports of torture were recorded in the single register of pretrial investigations, 376 of them were removed from the register because the pretrial investigations were halted for lack of evidence that a crime had been committed or because there was an unrevoked decision by the criminal prosecution agency that such was the case.

11. A total of 114 such statements were recorded during the period in question.

12. Of the pretrial investigations conducted by the procuratorial agencies, 439 were dealt with by special prosecutors, 34 by internal affairs agencies and 17 by bodies of the anti-corruption services.

13. A total of 11 criminal cases were taken to court, of which 10 were investigated by special prosecutors and 1 by the internal affairs agencies.

14. This led to the conviction of 18 officials, of whom none were sentenced to 5 to 12 years' imprisonment, 6 to between 2 and 5 years' imprisonment and 1 up to 2 years' imprisonment, while 10 officials were sentenced to non-custodial measures and 1 was released from criminal responsibility.

15. Special mailboxes have been introduced to ensure that persons deprived of their liberty may, without hindrance, submit complaints concerning allegations of wrongdoings by officials of institutions and bodies responsible for the enforcement of sentences (Penal Enforcement Code, art. 14 (2)). The complaints are collected once a week by the procurator, collection being witnessed and recorded by representatives of the administration. The special mailboxes are set up in places accessible to the prisoners.

16. Furthermore, in accordance with penal enforcement legislation, any suggestions, statements or complaints written by prisoners to the authorities responsible for monitoring and oversight of penal institutions and agencies are not subject to censorship and are sent to the appropriate recipient within 24 hours.

Recommendation 10

17. Transfer of detention authority to the Ministry of Justice.

18. The Committee reiterates that the State party should transfer authority for all detention and remand facilities, including prisons, temporary holding facilities and remand centres away from the Ministry of Internal Affairs. That step would be consistent with international standards and would reduce incentives for officials at such places of detention to commit torture and ill-treatment.

19. In accordance with the Act of 18 January 2012 amending legislation on the country's penal enforcement system, the functions and authority of the Ministry of Justice in respect of the penal enforcement system were transferred to the Ministry of the Interior to avoid the Ministry of Justice having inappropriate functions.

20. It should be noted that, within the Ministry of Internal Affairs, the penal enforcement system is separate from the criminal prosecution agencies and has maintained its autonomy as a separate entity in the form of a committee. The committee is a separate legal entity, with autonomous funding.

21. Its territorial bodies and agencies report to the committee.

22. In addition, it is mandatory for all staff of the different criminal prosecution departments, without exception (both within the Ministry of Internal Affairs and in other law enforcement agencies), to visit institutions of the penal enforcement system. The committee ensures that this requirement is complied with.

23. It is not necessary to transfer the temporary detention facilities to the authority of the Ministry of Justice as these are intended for short-term (up to 72 hours) detention, during which the preventive measures are decided on. The rights of detainees are regulated by the Act on the procedure and conditions of detention of persons in special temporary detention facilities and are fully respected.

24. No cases of torture in detention were recorded in the first nine months of 2015.

25. It should be noted that, in line with the Internal Affairs Agencies Act of 23 April 2014, the Ministry of Internal Affairs fulfils other non-police-related functions in addition to its policing functions (repression, prevention and detection of crimes).

26. The Ministry of Internal Affairs thus implements Government policy in the areas of citizenship and migration, issues identification documents and works on emergency prevention.

27. The organization and management functions of the Ministry of Internal Affairs in respect of the penal enforcement system committee thus do not infringe the rights of persons serving court-imposed sentences.

Recommendation 13

28. Human Rights Commissioner (Ombudsman) and the National Preventive Mechanism.

29. The State party should ensure the independence of the Office of the Human Rights Commissioner (Ombudsman) by establishing it through a constitutional or other legal text, and should broaden its mandate to enable it to function effectively in all parts of the country in its expanded role as the national human rights institution in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) and as the National Preventive Mechanism in compliance with the Optional Protocol to the Convention.

30. The mandate of the National Preventive Mechanism should be broadened to include monitoring of all places of deprivation of liberty, such as offices of police departments and of the National Security Service, orphanages, medical social

institutions for children with certain disabilities, special boarding schools, nursing homes for the elderly and persons with disabilities, and military barracks, and examining the conditions and treatment of children in penitentiary and non-penitentiary institutions.

31. Measures should be taken to improve the ability of the mechanism to carry out urgent and unannounced visits to places of detention upon its request. The State party should consider authorizing the mechanism to publicize its findings and recommendations shortly after undertaking visits rather than only on an annual basis and to ensure that the mechanism's members and the public can assess whether their recommendations have been acted upon.

32. The annual and other reports of the mechanism should not be subject to review and approval by the President before publication.

33. The Office of the Human Rights Commissioner (Ombudsman) and its legal status is defined in Presidential Decree No. 947 of 19 September 2002 on the establishment of that Office.

34. In line with article 4 of the Constitution, the applicable legislation consists of the constitutional norms, the corresponding Acts and other laws and regulations.

35. Under article 3 of the Laws and Regulations Act, presidential decrees are among the main types of laws and regulations.

36. All laws and regulations are directly applicable, if not otherwise stated in article 5 of the Laws and Regulations Act or their implementing legislation.

37. The Office of the Ombudsman enjoys independence in its work and is neither subordinate to nor subsumed within any given legislative, judicial or executive institution.

38. The matter is currently being considered in the framework of the activities of the National Commission on Modernization.

39. In 2012, the Office of the Ombudsman was accorded "B" status by the International Coordinating Committee of National Human Rights Institutions.

40. In addition, it fulfils the following Paris Principles:

- It is approved by the President in consultation with the chambers of Parliament;
- It is authorized to ask officials for any information regarding human rights and freedoms, perform inspections of institutions, including closed ones and, in circumstances of particular importance to the country, make representations to the President, Parliament or the Government;
- It may receive and consider communications sent from any of the country's territorial entities, including through its website;
- It sends recommendations to government agencies. An annual performance report containing all the communications and recommendations made by the Ombudsman is sent to the President so that their implementation may be monitored;
- It works with civil society and international organizations on a broad range of issues;
- Its activities are publicly and widely reported in the media and on its website (www.ombudsman.kz);

- The Ombudsman participates in the preparation and negotiation of laws and regulations related to human rights during their drafting and adoption by Parliament;
- It considers individual complaints concerning violations of human rights;
- It initiates examination of cases of human rights violations;
- It is independent in its activities and is neither subordinate to nor subsumed within any given legislative, judicial or executive institution;
- The annual report of the Ombudsman is published in hard copy and is freely accessible on the Office's website.

41. In addition, issues related to the protection of social and economic rights are priorities in the activities of the Ombudsman.

42. Specifically, the Office of the Ombudsman has introduced initiatives concerning the integration of persons with disabilities into social and political life, the prevention of labour and social conflicts, the harmonization of labour relations, the protection of children's rights, the protection of the rights of citizens from forced evictions and the resocialization and labour rehabilitation of offenders, among others.

43. Work is currently under way to amend legislation so as to expand the range of places that may be visited by the National Preventive Mechanism.

44. At the moment, in order to ensure respect for human rights, in accordance with national legislation, members of the National Preventive Mechanism have the right to freely choose and visit the following:

- Penal enforcement institutions (correctional facilities, temporary detention centres, including those of the National Security Committee, military detention barracks and military detention units);
- Compulsory treatment facilities (specialized tuberculosis centres, compulsory drug rehabilitation centres and psychiatric institutions providing compulsory medical care);
- Special temporary detention facilities and institutions (temporary detention facilities, special holding centres, holding centres and police stations);
- Juvenile adaptation centres, special educational establishments and educational establishments with a special custodial regime (special custodial centres for juveniles).

45. All visits by the members of the National Preventive Mechanism are carried out without advance notice. When a request for an urgent, unannounced visit is received, a decision is taken immediately and there are no constraints limiting the effectiveness of the response.

46. Thus, in 2014, members of the National Preventive Mechanism carried out 277 visits including: 2 to the National Security Committee detention facility, 73 to Internal Affairs temporary detention centres, 4 to military garrison guardhouses, 25 to juvenile adaptation centres, 17 to special holding centres, 11 to holding centres and 9 to special educational establishments.

47. Over the first nine months of 2015, 398 preventive visits were carried out, including, in addition to the above-mentioned institutions, 13 visits to various police stations and district police departments.

48. To help communicate the day-to-day activities of the National Preventive Mechanism and their outcome, the Coordinating Council under the Office of the

Ombudsman developed recommendations for members of the National Preventive Mechanism concerning interaction with the media.

49. The National Preventive Mechanism now has pages on social networking sites (Facebook and Twitter) on which it regularly publishes information about the institutions visited.

50. Neither the consolidated annual report, nor any of the other reports on the activities of the National Preventive Mechanism are studied or approved by the President before publication.

Recommendation 15

51. Administration of justice.

52. The State party should undertake structural reform of the system of administration of justice with a view to balancing in practice and ensuring equality of arms between the respective roles of the procurator and the defence counsel in judicial proceedings and ensuring the independence of the judiciary.

53. The State party should reform the system of prosecution and subject procurators to greater oversight by judges.

54. Defence lawyers should be allowed to collect and present evidence from the outset of judicial proceedings and to call defence witnesses, and should have prompt, effective and unimpeded access to all evidence in the hands of the prosecution.

55. The Committee's recommendation concerning structural reform of the system of administration of justice with a view to balancing in practice and ensuring equality of arms between the respective roles of the procurator and the defence counsel in judicial proceedings is being implemented with success.

56. The Criminal Code, the Code of Criminal Procedure and the Penal Enforcement Code, which are interconnected and came into force in 2015, contain new concepts and promote balance between the prosecution and the defence.

57. The institution of investigating judges was introduced. The activities of these judges are aimed at monitoring the way in which the pretrial investigation is conducted, and this has a positive effect on the degree to which constitutional human rights and freedoms are guaranteed in criminal proceedings.

58. The investigating judge has the right to be informed of all the evidence provided to the pretrial investigation, to demand additional information on the subject, to require the participants in the proceedings to attend a court hearing and obtain from them the necessary information on the criminal case.

59. In order to ensure judicial protection of citizens' constitutional rights, investigating judges will, as of 2016, also have the jurisdiction to authorize four stages in the proceedings: inspections, searches, body searches and seizures.

60. Thus, in reviewing the materials of the criminal proceedings, the investigating judge makes use of his or her powers to restore any violated right of one of the parties to the conflict and to prevent the possibility of unreasonable disruption or restriction of the rights of the other.

61. Investigating judges received more than 10,000 petitions and representations during the first six months of 2015, together with 1,227 complaints concerning the actions, inaction or decisions of agencies conducting initial or pretrial inquiries or the procuratorial agencies, of which one third concerned the actions or inaction of the

investigator and one fifth concerned the actions of the procurator. A total of 734 complaints were reviewed, and 231 of them were upheld.

62. The results of the review show that one in seven procedural decisions are found to be unlawful and are annulled, while almost half of all complaints against public officials are upheld, the court ordering that the relevant violations be remedied.

63. The new Code of Criminal Procedure: restricts the application of remand in custody as a preventive measure and expands the use of bail and house arrest with electronic surveillance; provides for the deposition of victim and witness statements; abolishes the practice of further investigation and cases being returned to courts of first instance for new trials; provides for a number of mechanisms that simplify the pretrial and court proceedings in criminal cases; introduces provisions concerning procedural agreements and reconciliation through mediation; and removes bureaucratic procedures involving the imposition of unnecessary procedural documents and the complexity of their structure.

64. Article 70 of the new Code of Criminal Procedure extends the mandate of defence counsel in criminal cases, granting them the right to present evidence and other material relevant to the case.

65. If the criminal prosecution agency rejects a petition submitted by a lawyer concerning the ordering of an expert opinion during the investigation or does not take a decision on such a request, the lawyer has the right to submit a reasoned application to the investigating judge.

66. The lawyer may also request the investigating judge to compel to appear before the authority in charge of the criminal proceedings a witness who has previously been questioned where it is difficult to ensure that person's attendance to give evidence.

67. In addition, the lawyer may raise the question of obtaining and ensuring the inclusion on the record of the criminal case any information, documents or objects relevant to the case.

68. In the interests of the expeditious delivery of justice, a three-tier judicial system will be used instead of a five-tier system, with district courts serving as courts of first instance, regional courts as courts of appeal and the Supreme Court as the court of cassation.

69. This reduction in the number of levels implies an increased role for appeals in the system, with cases examined by several judges. Minor criminal cases not involving deprivation of liberty are expected to remain under the consideration of a single judge.

70. As of 2016, the jurisdiction of courts with juries will be expanded. An additional 5 members will be added to the current 15 jury members to address cases where a petition for a jury trial is submitted by the suspect or accused.

71. A review of the implementation of the new provisions in the area of criminal law and criminal procedure indicates that there is now no imbalance between the roles of procurator and lawyer. They have equal opportunities to implement their statutory powers.

72. The Head of State has also initiated reforms that lay out 19 targeted steps towards the development of the country's legal system.

73. The institutional reforms are aimed at strengthening the independence of the judiciary, which will lead to improvements in the rule of law.